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**SUPREME COURT OF THE
UNITED STATES**

OCTOBER TERM, 1944

No. 321

SHREVEPORT ENGRAVING COMPANY, INC.,
Petitioner

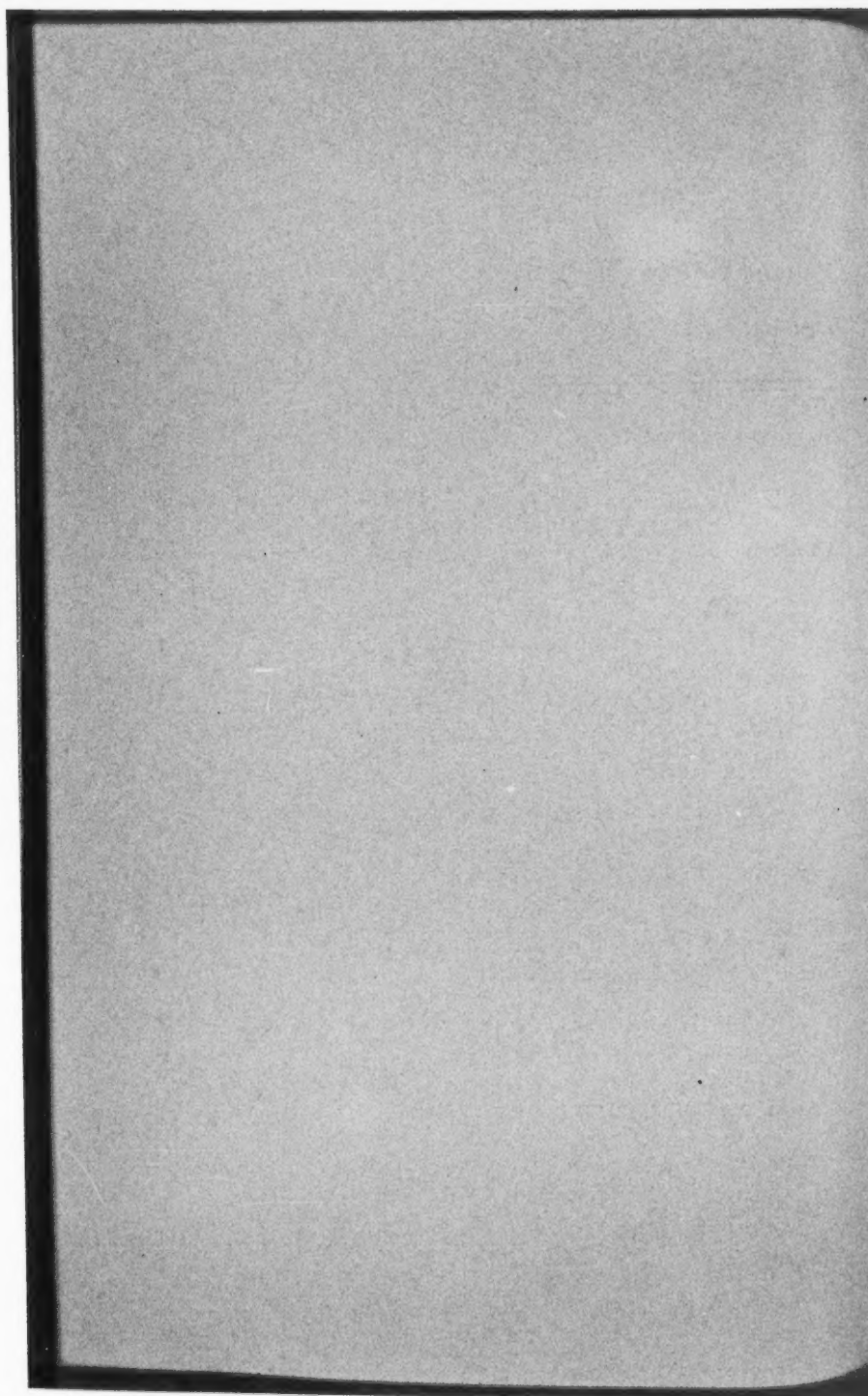
versus

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
FIFTH CIRCUIT COURT OF APPEALS
AND
BRIEF IN SUPPORT THEREOF

BEN F. ROBERTS,
Of Counsel.

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Attorney for Petitioners.



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SUPREME COURT OF THE UNITED STATES

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SHREVEPORT ENGRAVING COMPANY, INC.,
Petitioner

versus

UNITED STATES OF AMERICA,
Respondent

**PETITION FOR WRIT OF CERTIORARI TO THE
FIFTH CIRCUIT COURT OF APPEALS**

The Shreveport Engraving Company, Inc., defendant in the District Court of the United States for the Western District of Louisiana, and appellant in the United States Circuit Court of Appeals, Fifth Circuit files this its petition and prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals,

Fifth Circuit, affirming the judgment of conviction of petitioner, entered by said Court on June 1, 1944, and made final therein by denial of rehearing on July 7, 1944, R. 447.

OPINION BELOW

The opinion below is unpublished, but appears on pages 424-436 of this record.

JURISDICTION

The case involves questions of administrative and criminal law and the attitude of the presiding judge in the District Court toward defendant and the president of the defendant Company, a witness, who testified for said defendant Company, and the decision of the Circuit Court of Appeals is final, unless review is ordered by this, the Supreme Court of the United States.

It is contended, that jurisdiction to review is vested in this Court under section 347 (a) of Title 28 of the United States Code. See *United States versus Gulf Refining Company*, 268 U. S., 542.

STATUTE INVOLVED

The Statute involved is Section 2(a) of the Act of Congress of March 27, 1942, known as the Second War Powers act, and a directive, known as M-9-C, issued and signed by an employee of the War Production Board and published in the Federal Register.

The charge made in the information, filed by the United States Attorney for the Western District of Louisiana, is that the defendant Company used and processed an excess of copper over the allowed proportion, based on the Com-

pany's use of copper for a preceding period. R. 27.

Demurrer and amended demurrer were filed and overruled, R. 10 and 12.

The case was tried by jury and verdict of guilty on two counts and not guilty on one count was returned November 24, 1943, R. 416.

The evidence showed that defendant had on hand more than enough copper to meet its requirements during the periods covered in the information, R. 380, that there was no limitation on buying of copper sheets from any one or selling to any one, when in the original sheet state.

And that when used, copper must be scrapped and sold to a scrap dealer for a low price; see directive M-9-b, War Production Board, R. 392-5. Whereas the value of the original sheets was so high per pound as to make its expropriation by the government undesirable and unrequired. R. 360, 366.

That the directive was carried out in an arbitrary and discriminatory manner, and the trial court denied defendant the right to go into this, R. 45-58-62-70-71.

Motion for a directed verdict was presented at the close of the government's evidence and at the close of all the evidence. R. 75 and 317.

Motion for a new trial having been filed was overruled December 27, 1943, R. 418.

Appeal was duly taken and bond filed December 30, 1943, R. 406-407.

The case was heard in Circuit Court of Appeals and judgment rendered, June 1, 1944, R. 437.

Motion for rehearing was duly and timely filed and denied July 7, 1944, R. 447.

QUESTIONS PRESENTED

By the 2nd War Powers Act, section 2(a), Congress empowered the President to allocate materials "for defense, for private account and for export."

In doing this did Congress authorize the president through others to confiscate elements of ownership in materials, where the specific materials were not allotted to defense?

Did the authority vested in the president include the power of delegation to the head of an executive agency under the terms of the statute and authorize the exercise of presidential power by such departmental agency or officer of the government, as he may direct, when the head of the department named by him in his executive order was not an officer of the government, as contemplated by the Federal Constitution in article 2, section 2, clause 2, but was merely created by an Executive order?

If such delegation could be made to the chairman of the War Production Board, as the representative of a government agency, could the power be re-delegated to an employee of said board?

Does the publication of rules and regulations in the Federal Register over the signature of a mere employee comply with the statute?

Can such rules and regulations limit the use of materials, in this instance copper, where such copper is not allocated to national defense, but is kept unusable in the hands of its owner, a photo engraving company, when it is not available to or availed of by the government on account of intrinsic value; but if used by the photo-engraving company, and becoming scrap must be sold to "scrap dealers" and then becomes subject to defense uses in its cheapened form?

Has the trial judge the right in the presence of the jury to ask questions of defendant's president, while on the witness stand, which tend to cast aspersions on his patriotism, his intelligence and his business capacity and to say the defense is "a sub rosa defense" and in addition to this to exaggerate or distort the evidence?

REASONS FOR THE WRIT

Under the position taken by the trial court and sustained by the Court of Appeals, power is vested in an executive agency to confiscate an element of ownership, namely the use of its own copper, in its own business, when the copper is not allocated by the government to its defense and no compensation is allowed defendant for the deprivation of ownership in violation the 5th Amendment to the Constitution, and such a construction can not be placed on the statute here considered, when only the power to "allocate" is given and the decision is in conflict with *Stark et als. vs. Wickard*, No. 211, October term 1943, decided February 28, 1944, wherein the Supreme Court said,

"When Congress passes an act empowering administrative agencies to carry on Governmental activities, the

power of these agencies is circumscribed by the authority granted.”

Whereas the Office of Price Administration has been especially recognized by Congress and its Director has been named in an act of Congress, the chairmanship of the War Production Board is merely an administrative operation and is not mentioned in the statutory language referring to departmental officer or agency.

The delegation of power by the President to the chairman of the War Production Board was personal and could not be re-delegated to an employee of the Board inasmuch as the power of appointment of even inferior officers is “in the President alone” in the Courts of law or in the heads of departments and the decision below conflicts with *Ekieu vs. United States*, 146 U. S. 651.

The position taken by the Courts below conflicts with the Supreme Court’s declaration in *Steuart & Bro., Inc. vs. Bowles*, No. 793, October term 1943, decided May 22, 1944, wherein it was said “if petitioner establishes that he was eliminated as a dealer or that his quota was cut down for reasons not relevant to allocation or efficient distribution of fuel oil, quite different considerations would be presented.”

The approval by the Circuit Court of Appeals of the conduct and utterances of the trial judge conflict in toto with the rulings of this, the Supreme Court in *Quercia vs. United States*, 289, U. S. 470.

Transcript of record is attached hereto and made a part hereof.

Wherefor, your petitioner respectfully prays, that a

writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify, on a day certain to be therein named, the full and complete transcript of the record and all proceeding in the cause numbered and entitled on its docket No. 10,924, Shreveport Engraving Company, Inc., appellant vs. United States of America, appellee, and that said judgment of the United States Circuit Court of Appeals for the Fifth Circuit may be reversed by this Court and that your petitioner be discharged without delay and have such other and further relief in the premises as this Honorable Court may deem just and proper.

FRANK J. LOONEY,
Attorney for Petitioner.